LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr PS Russo MP (Chair)
Mr SSJ Andrew MP
Mrs MF McMahon MP
Ms CP McMillan MP
Mrs LJ Gerber MP
Mr R Molhoek MP

Staff present:

Ms R Easten (Committee Secretary)
Ms K Longworth (Assistant Committee Secretary)
Ms M Westcott (Assistant Committee Secretary)

PUBLIC HEARING—INQUIRY INTO THE CHILD PROTECTION AND OTHER LEGISLATION AMENDMENT BILL 2020

TRANSCRIPT OF PROCEEDINGS

MONDAY, 10 AUGUST 2020

Brisbane

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The committee met at 9.19 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Child Protection and Other Legislation Amendment Bill 2020. I acknowledge the traditional owners of the land on which we are gathered today and pay my respects to elders past, present and emerging.

On 14 July 2020 the Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence, Hon. Di Farmer, introduced a bill to the parliament. The parliament has referred the bill to the Legal Affairs and Community Safety Committee for examination, with a reporting date of 28 August 2020.

My name is Peter Russo, member for Toohey and chair of the committee. With me here today are Rob Molhoek MP, member for Southport, replacing James Lister MP, member for Southern Downs and deputy chair; Stephen Andrew MP, member for Mirani; Laura Gerber MP, member for Currumbin; Melissa McMahon MP, member for Macalister; and Corrine McMillan MP, member for Mansfield.

The purpose of today is to hear evidence from stakeholders who made submissions as part of the committee's inquiry. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence.

These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard, I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to the chair's direction at all times. The media rules endorsed by the committee are available from the committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings by media, and images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobile phones off or to silent mode. The program for today has been published on the committee's webpage and there are hard copies available from committee staff.

JORDAN, Dr Trevor, President, Jigsaw Queensland Inc. (via teleconference)

CHAIR: Good morning, Dr Jordan. I invite you to make an opening statement, after which the committee members may have some questions for you.

Dr Jordan: Thank you, Mr Chair. We appreciate that the amendments are there to clarify the current arrangements in Queensland and support that attempt at clarity. Jigsaw believes that any form of local adoption has to be substantially different to past practices. There has been bipartisan support for an apology for past adoption practices, that adoption is seen as not the only permanency option available. Jigsaw supports alternatives to adoption and also the moving of adoption from plenary adoption to simple adoption arrangements, as outlined in our submission.

Briefly adding to that, what is required is for Queenslanders to give a helping hand to kids in out-of-home care who need permanency. As stakeholders we appreciate that many kids are going from family to family and are stuck in the system, but that present reality means that the people in the community have to realise that the need for adoption and permanency today is different than in the past—and the adoption of infants is a minor part of that. There is a need for permanency for children who already have substantial relationships with members of their families but need to be removed from some of those family arrangements. They need to stay in contact with siblings, grandparents and other people who support them in those communities. Any form of adoption into the future must take into account that we are adding families rather than subtracting from families, except in extreme cases where it may be necessary for any particular reason. We support permanency to age 18 as an alternative to adoption, or simple adoption, where a person becomes part of two families rather than being severed legally and in relationships from their family.

We make the point that there are roughly 8,000 children in out-of-home care in Queensland. Half of those will be returning to their families, but we have to be realistic that there are not thousands of people opening their homes to offer permanency for children in care. Those people who are available, whether it be for simple adoption or permanent guardianship till age 18, have to be knowledgeable and

skilled. The kids deserve that. Kids deserve better than gullible dreamers who think that adopting a kid or providing permanency might be a way for them to create a family. There are challenges to looking after kids in care. Kids who have had adverse childhood experiences need people who are knowledgeable and skilled and supported financially and in terms of services, as the original families they come from need continuing support from government services to deal with the aftermath of disruption to family life. Any enterprise needs to identify the right people, skills, time, place and financial support for that to occur. That is the framework in which we support the current amendments as clarifying consideration of permanency and adoption, to keep moving forward and being realistic for today's age.

Mrs GERBER: Dr Jordan, you have talked a lot about simple adoption and open adoption. Can you explain to the committee the differences between open adoption and simple adoption and why one might be preferred over the other?

Dr Jordan: I am somewhat familiar with the New South Wales situation. Open adoption still involves plenary adoption, which is the termination of the legal relationship with the original family; however, it recognises the identity and psychological impact that comes from a closed adoption. A child centred policy approach means that people need to maintain connection with their original family. Permanent guardianship is similar. Simple adoption and permanent guardianship to 18 are converging, but open adoption still involves that legal separation. Your parentage is legally transferred forever to another family, even though the connections are maintained, whereas in simple adoption the legal identification of parentage remains the same for both families. The implications in a country like France, which has simple adoption, are that if someone dies intestate they are the offspring of two families—not simply one—whereas even under an open adoption system we know that there is no sense of legal continuity with the original family.

In Australia, currently most obligations, except people dying intestate, amongst family members legally finish at age 18 anyway. The idea of lifelong commitment and permanency in relationship is something that is earned through the relationships of trust that are built up during childhood and beyond. It is very hard to legislate for permanency. Our experience in Jigsaw Queensland is that adoptive families are like other families in one particular regard—that is, some of them sustain their relationships and adoptive families can also break up. We at Jigsaw do not particularly like using the term ‘forever families’ because we know that even adoptive families are not always forever. They can break down just as much as non-adoptive families. The essential difference between adoptions is still that legal severing of the relationship forever.

Mrs McMAHON: My question is in relation to adoption being listed higher than long-term guardianship in the amendment. Can you outline your organisation’s support for adoption being listed higher than long-term guardianship with the chief executive?

Dr Jordan: Due to the phone reception, I have missed the subtlety of your question. Could you repeat the distinction you are wanting me to make? I missed it, sorry.

Mrs McMAHON: My question was in relation to the fact that there is a hierarchy of preference.

Dr Jordan: Yes. I have it now. The hierarchy of preference we support is the Queensland one rather than the New South Wales one, which is to see adoption as the second last option. We prefer alternatives to adoption that provide permanency for children in out-of-home care till age 18. We prefer that to adoption. We see those as converging. We believe that the figures for permanency and adoption should be released together so the community knows that, even though adoption numbers are low, permanency arrangements should be considered with adoption when reporting.

We definitely support the Queensland hierarchy that adoption is the second to last option. I know that in New South Wales it is slightly the other way around. In practice there they are essentially the same. Then again, practice involves how you arrange dozens to hundreds of departmental workers to make decisions that are in the best interests of the child. We are really concerned about the decision-making practice that occurs here all the time, particularly in the light of past forced adoption. With some kids who have experienced neglect, there may have to be decisions made by a court that essentially limit informed consent on behalf of the parent for kids entering the system. It is those practices at that level that make the difference between adoption and permanent guardianship to age 18, as to whether those practices can build the trusting relationships which allow lifelong commitment.

Ms McMILLAN: Dr Jordan, I was encouraged to hear you mention that the longevity of any relationship is never secure or never predetermined. You also speak along those lines in the submission, where you say—

... the quality of relationships between members of original and adoptive family members lies beyond the reach of legislation and should be addressed through providing relevant support services to individuals and families.

Can you expand on that?

Dr Jordan: Yes. I believe that from both my own experience as an adopted person and the experience of Jigsaw in terms of the families that we deal with. No particular system can predict outcomes. The advantages we are looking for from family life—that is, growing up in trusted relationships—that we can draw on lifelong go both ways. It is not only the commitment of a carer to a child but also the commitment of a child who becomes an adult to the people who parented them either originally or who cared for them later in life. Legislation cannot control that. That requires information and emotional support.

The University of Lancaster did a study in the UK on why when kids go into care because of problems in their original family often there would be multiple kids coming from that family and entering care. What they found was that the people who lost their children to the system were not supported enough. The processes were too quick and beyond their understanding and they received no emotional support. They often fill that loss and gap by having another child. This can be a factor. It is not only support for the carers and adoptive families and for the adopted persons but also support for the people who sometimes make a decision that their child, because of circumstances, might be better cared for by others. They continually need support and not suddenly when the arrangement is made for all interaction with the department to cease. That has been the case around Australia in the past. That is one important factor.

The other thing is that it is not just about the children having permanency in terms of where they end up but also about the children and the families needing more permanent relationships with the workers involved in making the arrangements. Some of you may know and have heard through this process about the high turnover in some of these areas. Child safety is a very challenging area to work in. One of the issues is that it is not only about permanency of the family but also about building long-term relationships with the people who are the key decision-makers in everybody's life.

CHAIR: There being no further questions, thank you, Dr Jordan for your time today.

Dr Jordan: Thank you very much for the opportunity.

DONOVAN, Ms Rachael, State Coordinator Queensland, CREATE Foundation

CHAIR: I invite you to make an opening statement, after which committee members may have some questions for you.

Ms Donovan: I would like to begin by acknowledging the traditional custodians of the land on which we meet today—the Jagera and Turrbal peoples—and pay my respects to elders past, present and emerging.

My name is Rachael Donavan and I am the Queensland State Coordinator for the CREATE Foundation, the national consumer body representing the voices of almost 45,000 children and young people who have a care experience in Australia. I also have a lived experience of the child protection system and was a CREATE young consultant a number of years ago. CREATE welcomes the opportunity to provide further comments for our submission towards the Child Protection and Other Legislation Amendment Bill.

We advocate that permanency can be achieved in multiple ways. In our submission we put forward four key points. The first is that children and young people have a right to participate in important decisions about their lives, especially in permanent decisions such as adoption, and that, where children are too young, their family, kin or community are consulted and/or an independent body is utilised to establish and represent the best interests of the child. Secondly, the requirement of a 24-month maximum period for making permanency decisions may create excessive emphasis and efforts towards meeting these targets rather than addressing the needs and best interests of the child and/or family.

Thirdly, if adoption is considered to be an appropriate option for a child or young person, efforts should be supported in maintaining family connections with current and future siblings, relatives and birth parents. Lastly, the amendments to legislation are only part of the process and it is the implementation of these changes that will have the most impact upon the lives of children and young people.

Children and young people have diverse views on permanency. This was highlighted in CREATE'S permanency and stability report in 2019 where 31 participants with a care experience shared their views and experiences. The findings clearly revealed diversity and nuances about this complex topic, demonstrating that it is incredibly important for cases for adoption to be considered on a case-by-case basis and with the involvement of the child or young person in the decision-making process.

CREATE noted that neither the amendment nor the statement of compatibility acknowledge or enshrine a child's participation or expression of views in this process, despite children and young people having the right to participate in decisions that impact their lives under article 12 of the United Nations Convention on the Rights of the Child. For children and young people living in out-of-home care, this right is even more important.

CREATE'S 2018 national survey encompassing the views of 1,275 young people with a care experience found that only 67 per cent of participants said they could have a say at least reasonably often, and 15 per cent said they rarely or never got to have a say in decisions about their life. We would also like to highlight that, if adoption is appropriate for a particular case, consideration must be given to ensure that children and young people can maintain connections with their siblings and family members and to their community and culture.

Our 2018 national survey also found that 36 per cent of respondents with siblings in care were separated from all of their brothers and sisters. Adoption practices, as we know, legally sever a child's ties with their birth family and establish a new identity, with little ongoing protection or oversight of their care and wellbeing or the contact with biological siblings and extended family. Unfortunately, we know that loss of identity, culture and lifelong connections with family including siblings can bear heavily on children's and young people's sense of belonging and identity. Therefore, adoption should only be a last resort after all other appropriate avenues have been explored.

CREATE suggests that, if adoption is utilised as a permanency adoption, the government consider simple adoption as an adoption practice implemented in other jurisdictions—which provides the benefits of adoption through lifelong connection and legal security with the adoptive family while retaining legal ties with the family of origin—instead of plenary adoption, which is currently enforced in Australia. Two young people's quotes from CREATE'S national survey are—

I would like to know who my family is and where I come from which is hard because both of my grandparents were members of the Stolen Generation. (Female, 16 years)

...

People in care should be talked to about Guardianship and Adoption when they are made permanent wards of the State by the Courts and there is no chance that they will be restored to their birth parents in the future. (Male, 14)

Today we are still facing the impacts and consequences of historical forced adoptions. CREATE acknowledges that adoption without consent of the biological parents' community and/or the child has been and continues to be a traumatic experience in Australia. The Aboriginal and Torres Strait Islander child placement principle was developed based on our understanding of these impacts, including the loss of identity and connection to culture and community. As we know, Australia's stolen generations continue to suffer from this trauma.

We must learn from these past mistakes. It is vital that the government actively consults and includes children and young people in developing and refining the implementation strategy for the new legislation as they will be the ones who are most impacted. If we are to effectively support the permanency needs of each individual child and young person in out-of-home care, the child or young person needs to be fully informed and supported, be part of the decision-making process and consent to adoption before it proceeds. We must listen to their voices and include them throughout the planning and decision-making processes.

Mrs GERBER: I want to pick up on your comments around the fact that neither the amendment nor the statement of compatibility acknowledge or enshrine the voice of the child or the child's participation or expression of views in the adoption process. Can you explain for the committee how you would implement that, for adoption to be genuinely considered, the child or the young person be fully informed and supported, be part of the decision-making process and consent to adoption—obviously taking into account the child's age—before adoption proceeds?

Ms Donovan: Often decisions are made about children and young people in out-of-home care, not with them or including them. With regard to a permanent decision such as adoption that legally severs their ties with their family of origin it is especially important, particularly in light of past adoptive practices and the trauma that that has created and the apologies that come from that. I think it is especially important to ensure that children's voices are at the centre of that decision. I am aware that this legislation is really considering the needs of small children. In that case, small children are unable to be involved in those sorts of decisions.

We would argue that there should be some sort of representative body or a support person to help inform that decision including the needs of family and the community and the kin. They should be involved in that decision also. With regard to the child, the child's best interest really needs to be at the centre and at the forefront of that decision. In the case of a child under three or under five, an independent body really needs to be able to support that process and look at the best interests of that child. The department often is not best placed to be making those decisions because it is not always completely objective or separate from the process. That is what we would advocate for in that instance.

Also, for a permanent decision such as adoption, we would advocate that a child should be involved in that decision. We would say it is probably not appropriate to make such a final decision until that child is older and can be included in that decision. Maybe in the interim they could be put on another sort of long-term guardianship order such as a permanent care order or another long-term order. Then when they are older and they have a say in making that choice, they can be involved in that decision. We have heard from young people who are older who said that they had been with their carers for a long period and they would like to be adopted. That is their right and determination and agency to make that choice when they are older. We think there is a lot of danger in making a decision for a young child without them ever being involved in that decision that revokes their right and access to their birth family, particularly to siblings and other extended family, not just parents.

Mrs GERBER: Thank you. That was very helpful.

Ms McMILLAN: I am interested to know if the views of the children were canvassed around how important sibling co-placement is in adoption.

Ms Donovan: We have done a number of reports and consultations with young people around sibling contact. It is in our 2018 national survey, for example. We have also done specific consultations around sibling contact. Repeatedly it is one of the No. 1 issue that young people and children highlight to us. When they are put in out-of-home care they are often separated from their siblings in the first instance and, secondly, the ongoing contact with their siblings is problematic and often does not occur. This, of course, has a very detrimental impact on their relationship with their siblings, who are often a source of support. This is something that we hear time and again from children and young people: sibling contact is a particular issue. That is another reason we are concerned about these legislative amendments.

How do we ensure that children and young people have contact with their birth siblings—not just current siblings but also future siblings who are yet to be born? If their ties to their family are legally severed, how do we ensure they still have a right to their family and a right to have contact and a relationship with their siblings? How we maintain that is a really important question to ask. It is something that children and young people tell us quite a lot.

Mr MOLHOEK: Thanks so much for coming today. I have not been involved in this space for a while—I am a fill-in today—but I have been a longstanding admirer of the work that CREATE does. I think some of the statistical data and the programs that you run are fantastic. I say a word of congratulations. I completely support and respect the need for children to have that connection with siblings and kin, but there are many occasions when that connection can be somewhat counterproductive. I recently had someone come to see me. The family of the child had limited access to the child and they were grooming the child to create all sorts of problems and that actually became quite disruptive to the child's life. In the broader picture of things, how do we ensure that the real best interests of the child are served? How do we assess whether the kin or siblings are actually being productive and helpful as opposed to having to protect the child from some of those encounters?

Ms Donovan: It is a really tricky scenario. That is why in our submission we have said—and it is our view also—that these sorts of really big, permanent decisions need to be made on a case-by-case basis for one thing. Secondly, often in families who have had contact with out-of-home care there are a lot of complex issues going on: intergenerational trauma, substance abuse, mental health issues or domestic violence. These kinds of factors play a part. We have to look at those issues as well as a separate kind of preventive measure.

In the case of families where there are complex concerns going on—and the safety and the wellbeing of the child have to be at the centre—we also have to think about how we look at and support these families. If there are siblings that maybe have some problematic or trauma based responses, how do we support those children or young people through those kinds of experiences or incidences? More often than not it is a trauma response, so we need to start looking at the cause of those issues and supporting those young people.

Severing a relationship with family is quite an extreme measure. We have to look at that with extreme caution. How do we ensure young people are safe when they are in contact with their family? We hear a lot that children, when they are old enough, might want to do what is referred to as self-place back with family which is not approved by the department. That is where young people often want to go back to, because their identity is connected to that family and they are their blood relationships. That may not always be safe, but at a certain age young people make those decisions for themselves.

How do we support them to do that in a safe way? Sometimes just saying, 'No, that's not allowed,' does not work because they will do it anyway. It is more about a harm minimisation response and working with a young person in creating safety plans and that sort of thing. Working through a trauma informed approach is what we need to really consider, instead of saying that this person or this family might not be the best influence so, therefore, we sever the ties. In the end, young people are going to make decisions themselves at a certain age. Even when they are over 18 they often go back to family and that breaks down again and creates more trauma. How we can help families heal and move forward is a really important thing to think about.

Mr MOLHOEK: You mentioned that when young people have the right to choose to go back, many opt to do that. Does CREATE have any statistics on the number of kids who elect to go back to their sometimes dysfunctional or sometimes, hopefully, much better families in due course?

Ms Donovan: I would have to take that on notice if that is okay. I could get some figures for you.

Mr MOLHOEK: From memory, the figures were quite high.

Ms Donovan: Yes.

Mr MOLHOEK: With a bit of indulgence, I just say that a number of years ago when we looked at it it was one of the arguments behind creating a much stronger platform for fostering or supporting existing families. I would be interested to explore that a bit more.

Ms Donovan: Yes.

CHAIR: I thank Rachael for attending. Are you able to have the answer to the question taken on notice to the secretariat by the close of business on Monday, 17 August, please?

Ms Donovan: Sure.

CHAIR: Thank you for your time and your submission.

CAPOMOLLA MOORE, Mr Peter, President, Adoptee Rights Australia (via teleconference)

WHITE, Ms Sharyn, Secretary, Adoptee Rights Australia (via teleconference)

CHAIR: Good morning and welcome. I invite you to make an opening statement, after which committee members may have some questions for you.

Ms White: Thank you for including Adoptee Rights Australia in this public hearing. I have five points to make, mostly because we are concerned about the response to the submissions supplied by the department on Friday. We do not consider that this response from the department accurately reflects what was said in most of the submissions or shows genuine engagement with the issues raised.

Firstly, we argued at part 5.4 of our submission that, with the prioritisation of adoption from clause 8 of the bill, at least six different human rights under the Human Rights Act 2019 are limited. The department answered this with, 'The bill is accompanied by a human rights statement of compatibility.' We were clearly responding to the statement of compatibility as we were disputing the claims made in it. We also identified a further four human rights limited by clause 8. None of these points was addressed in the department's document.

Secondly, in part 4 of our submission we discussed the breach identified by the minister in the explanatory notes to the bill and we identified further breaches of the fundamental legislative principle that 'legislation has sufficient regard to an individual's rights and liberties including natural justice and proportional intervention'. Examples we identified were the disproportionate intervention in an adopted adult's life in accessing birth records, information, files and when attempting family contact and also when identifying as an adult having been adopted. This was not addressed in the department's document because the department made these points out to be proposals for reform and claimed they are outside of the scope of the bill when, in fact, they are very relevant to the bill and their relationship to the explanatory notes was clearly stated.

Thirdly, we also talked about the discharge availability easily open to adoptive carers while the adoptee is a minor and how, with increases in adoption, this increases proportionally, similar to the rehoming pandemic in the US. The department paraphrased our argument in one sentence, on page 11 of their document, and then did not address the issues we had raised in the submission. This hesitance to discuss discharges is in keeping with the fact that discharge information and statistics are not provided with other adoption statistics to the AIHW for their annual adoptions overview. To me, that is akin to refusing to provide divorce statistics while prioritising the promotion of marriage.

Fourthly, as ARA states in our submission and as you have also heard from associations for adoptees and others, adoptees abused in care were excluded from the Royal Commission into Institutional Responses to Child Sexual Abuse because they were adopted. Mention of this is also supposedly outside of the scope of the bill. However, the effect of an adoption order is that it removes a child from the out-of-home care system and also removes the duty of care obligations from the state. There are explicit safeguards for the child built into the Child Protection Act, including the comprehensive standards of care. In adoption, the child is placed under an act with no explicit standards of care, no requirements for welfare checks and no recognition of their added vulnerability. Although they never go home, they disappear out of the out-of-home care system when the final adoption order is made that creates the legal fiction that they are biologically related to their carers.

In summary, we ask: in what other practice area are there such a variety of negative outcomes indicated, no evidence base showing positive outcomes over the last span and serious limitations on human rights as well as alternatives that do not have these issues, yet the response is that this highly controversial practice be prioritised?

We challenge the minister to provide a body of independent, peer reviewed research that supports the claims made for the benefit of prioritising adoption. We recognise the committee are busy, but we sincerely hope they can find time to read the submissions themselves to get an accurate picture of the overwhelmingly negative response to this bill.

Mrs GERBER: Can I take you to part 5.2 of your submission where you talk about the protection of families and children. In particular, you note that by placing a child in a situation where there are no safeguards and standards of care and no recognition of the added vulnerability, as you have just stated, the state is not acting in the best interests of the child. Can you inform the committee if you suggesting that there should be more follow-ups over a longer period when the child is adopted out to make sure the child is in a safe environment? If so, how much longer are we talking about?

Ms White: I was actually having quite a bit of difficulty hearing you. I believe you were talking about follow-up welfare checks for the child?

CHAIR: Give us a minute and we will use a closer microphone.

Mrs GERBER: I will repeat the question in its entirety. I was particularly referring to part 5.2 of your submission where you talk about the protection of families and children. In particular, you noted that placing a child in a situation where there are no safeguards and standards of care and no recognition of their added vulnerability, as you have just stated in your verbal statement to the committee, the state is not acting in the best interests of the child. Can you inform the committee if you are suggesting there should be some more follow-ups over a longer period when a child is adopted out to make sure they are in a safe environment? If so, how much longer are we talking about?

Ms White: What we are pointing out when we are saying things like that about what happens in adoption is basically that there are too many problems to actually fix. You cannot just go in and tweak the odd little thing that is evidence of there being a problem and then it will be fixed. It is an example of the overall issues with adoption. Not following the United Nations Convention on the Rights of the Child—article 25, I believe it is—where any child in care—and care is inter alia with adoption included in that, in article 21, I believe. The requirement is that any child placed in care for their protection by the state has to have follow-up welfare checks. This has never happened in adoption, because the child disappears and becomes as if they are the biological child of the family that takes them. That is at odds with any kind of a follow-up practice or any of the standards of care that are required in the Child Protection Act.

Mrs McMAHON: Referring to your submission, in part 3.4 you made reference to discharge adoptions increasing. Could you provide the committee with examples of some of those exceptional circumstances in which discharge is being granted in Queensland?

Ms White: We have been refused information about discharges, so that is based on the availability of it in the legislation. Especially when a child is under 18, when a person is a minor, if somebody goes to court to ask for a discharge—and that can be any party to the adoption besides the minor child. The minor child can only ask for a discharge when they are an adult. That is a separate issue and it should be a right. Say a child is 10 years old and there are some extreme behavioural issues, as there often are because of the situation, the non-biological nature of the relationship and the trauma and everything like that of the separation. It is a few years later. Maybe the adoptive parents have divorced or things have happened differently in their lives and the honeymoon period is over for the adoption. They decide that they cannot cope. The child may be diagnosed with RAD, reactive attachment disorder, which is usually to do with not being able to attach to the adopters. For example, they may go to court. It is available in the Adoption Act that if they do that they can apply for a discharge. That discharge would be subject to exceptional circumstances, but also it would be subject to the welfare of the child. If the adults in that situation are willing to go to court to actually not take care of that child anymore then the likelihood would be that, in terms of the welfare of that child, the judge would decide it is not in their best interests to be the child of that family anymore.

Mrs McMAHON: Do we have an idea how often this occurs in Queensland?

Ms White: No, we do not because we have been denied information. We have asked the department about various aspects of information about discharges. On the increasing numbers of discharges that adult adoptees are applying for and the outcomes of those—any discharge information at all is just not provided, which makes it very difficult. We know within our own community that a lot of adopted adults are attempting discharges. In other states there is different legislation.

The other thing that we say is that legislation changes quite frequently. In South Australia it recently changed so that discharges can be achieved only for the adoptee under the rights and welfare of the adoptee, so there is no need to prove any special circumstances at all. Unfortunately, this extended to the adoptive carers' applications for discharges too. Looking at the United States, where adoption has not decreased as it has in Australia, the number of rehoming stories is just incredible. That is what they call them over there. It is a lot less regulated system and they are not a signatory to the UNCRC, but the sheer numbers of adoptions means that there is a proportional number that break down or dissolve. That is our argument: basically, the more adoptions there are, the more likely there will be discharges.

CHAIR: That brings to a conclusion this the part of the hearing. Thank you, Sharyn and Peter, for your evidence and for your written submissions.

STERLING, Ms Leith, Executive Director, Child and Family Services, The Benevolent Society (via teleconference)

CHAIR: I invite you to make an opening statement, after which committee members may have some questions for you.

Ms Sterling: Thank you for the opportunity. I really only want to make a very brief statement in relation to our organisation and the reason we put this submission together. In 2011 we made an apology as an organisation for past adoption practices. As Australia's first charity, we have a long history of supporting vulnerable members of the community. However, we were also involved in the care of women and children at the Royal Hospital for Women in Paddington and Scarba Welfare House for Children at Bondi. We ran an adoption service between 1969 and 1975. In 2011 we lodged an apology for our historical involvement in forced adoption practices at those two locations. Our ongoing work providing postadoption services for almost 30 years in New South Wales and Queensland is informed and guided by our responses to the knowledge that we have gained through working with people of the impact of those adoption practices. We service clients from the age of teens or even younger right through to people in their eighties, so we do understand that lifelong impact. I wanted to start by acknowledging that practice we have been involved in, our heartfelt apology and the fact that we finish our apology by saying that we are committed to assisting those affected by adoption practices in the past in their lives today and ensuring that the mistakes of the past are not repeated.

Mrs GERBER: In your submission you note that funded and ongoing specialised postadoption support is needed. You list those postadoption support needs. What is the current situation in terms of ongoing support services available for children and families affected by adoption?

Ms Sterling: I am actually having a little bit of difficulty hearing you, I am sorry. Is your question about the ongoing situation in terms of postadoption services?

Mrs GERBER: Yes, essentially. In your submission you have listed some ongoing adoption support needs. What is the current situation in relation to the ongoing support services available to children and families affected by adoption?

Ms Sterling: In Queensland, the Benevolent Society is the only funded service to provide those ongoing supports. There are a number of services that are funded as advocacy type organisations. However, we are funded by the Department of Child Safety, Youth and Women to deliver those postadoption services.

It is true to say that the demand for our services is increasing quite considerably. As I said, we provide services for the length of time that people need them. We have clients who have accessed our services on and off over the past 10 years and we provide specialist counselling and support services. Our clients would say that understanding the impacts of adoption and, particularly, some of the trauma related to adoption is something that is quite a specialist skill. They often report to us that other services—for example, counselling services, mental health services or even just general health and wellbeing services—do not necessarily understand the impacts of adoption and that lifelong impact that can be there for them. I guess it is true to say that we are a fairly specialised service because we do understand that and we are able to help people to understand that themselves. We also work not just with the individual. For instance, we work with other members of the family. It might be a person who is an adopted person, an adoptive family or a parent who has lost their child to adoption. It is quite a unique service in that respect. We receive up to 200 new referrals each year, but it is a relatively small service. We have about four staff who work across the state and we provide services across the state.

Mr ANDREW: What is the demand currently for your services? It sounds like there is quite a demand. Would you be able to expand on that, please?

Ms Sterling: We offer services and people can self-refer into our services, so it often depends. Sometimes we will receive quite a large number of referrals, if there has been, for instance, media coverage of adoption or something like that. We can receive up to 10 to 15 referrals a week, which can be inquiries from, as I said, a person who is impacted by adoption or a family member or a partner, for instance.

What we are finding is that people are looking for lots of different experiences. Some people are looking for counselling. We do a lot of group work as well. Unfortunately, our group work has been severely limited during the COVID-19 pandemic. Often people tell us that the group work we do helps them realise that other people are feeling the same way or other people are having similar experiences to them, so that sense of connectedness to others—we actually call them connections groups—is a really essential part of our service. Some of our clients only access group type activities; others have a more intensive period of counselling that they can step in and out of.

Our service is unique in that there is no end point, basically, so people can make contact if something happens—and there are a lot of triggers that happen in people's lives if they are impacted by adoption. Often they just need a short period of support and then they can step away and get back on with their lives. The other part of the work we do is educating other mental health services or health services about the impacts of adoption so they can also provide more inclusive and more supportive services. It is quite multipronged in terms of the types of services that we provide, but the demand is always there and it goes up and down, often depending on what is happening out in the general community.

CHAIR: That brings to a conclusion this part of the hearing. I would like to thank you for your evidence today and your written submissions.

CORKHILL, Ms Heather, Senior Policy Officer, Queensland Human Rights Commission

McDOUGALL, Mr Scott, Queensland Human Rights Commissioner, Queensland Human Rights Commission

CHAIR: I invite you to make an opening statement, after which committee members may have some questions for you.

Mr McDougall: Good morning, and thank you for the opportunity to address you today. I would like to acknowledge the traditional owners of the land on which we are gathered and pay my respects to their eldest past, present and emerging. As acknowledged in the Human Rights Act, human rights are of special importance to Aboriginal and Torres Strait Islander people. When considering the potential implications of this bill it is important that due regard is had to the history of child removal practices in Queensland—a practice that continues to affect the daily lives of individuals, families and communities.

I do not propose to provide a full overview of our submission other than to say that, in terms of human rights compatibility analysis, there is a real question mark about the necessity of the laws, whether there are less restrictive alternatives to adoption, and whether in fact adoption is likely to achieve the purpose of creating permanency and security for children.

The bill follows a long period of reform leading to the 2018 amendments which introduced permanent care orders. We do not consider, except in exceptional cases, that there is sufficient evidence supporting the benefits as outweighing potential harms. I think this is reflected in the answer to the question on notice given by the director-general about the very small numbers of children adopted in the last five years from the child protection system, which was six in the last five years.

Many of the submissions that have been made to the committee point to the fact that there is no one quick fix to child protection in Queensland and adoption is far from a panacea but instead causes deep trauma to adoptees, birth families and communities. It is clear that further in-depth and meaningful consideration of the current adoption regime is required prior to elevating it in the hierarchy of placement options. We suggest that the appropriate time for this is in the review of the Adoption Act so that the government can properly evaluate whether the Adoption Act is responding to the needs of children and families and reflecting the present realities of adoption in Queensland before hastily elevating its role in the child protection system.

I would conclude by pointing to some of the recommendations that we made around the Adoption Act, which is due for review next year. We consider that on review of the Adoption Act the government should look at a framework for mandatory and enforceable adoption plans to safeguard the rights of the child and birth family. They are plans that are, as I understand it, available in New South Wales as part of their adoption regime and are enforceable in New South Wales in the Supreme Court, ensuring that due weight is given to the child's views based on their age and maturity. Finally, introduce a requirement by amendment of section 320 to require that the decision to recommend an Aboriginal and Torres Strait Islander child for adoption is not delegated by the chief executive.

Mrs GERBER: Thank you for your appearance today before the committee. In your submission you note—

Following a long period of reform, the further proposed changes to the *Child Protection Act 1999* (**CP Act**) are unnecessary, or at the least are premature.

Would you please explain what the commission means by 'unnecessary, or at the least are premature'?

Mr McDougall: They are premature in the sense that I outlined. There is going to be a review of the Adoption Act, so if there are issues with adoption being taken up then they should be addressed properly as part of that review rather than responding so hastily to the coroner's recommendations in the matter of Mason Jet Lee, which really is the impetus for this bill.

With regard to the issue of necessity, adoption is already an option that is available, and I think the very low take-up of it is just reflective of the understanding among child safety practitioners that it is not an outcome that is desirable in the great many cases that come before the protection system.

Ms McMILLAN: Thank you, Mr McDougall, for your time, as always. Your submission supports a focus on early intervention to prevent removal to out-of-home care and that it should remain a priority along with an increased use of kinship care, especially for our ATSI children. Can you expand further on this point?

Mr McDougall: Again, this is reflected in the submissions that are before the committee. When I talk to particularly Indigenous people throughout Queensland, but also service providers working in this area, they will routinely talk about the lack of services available to support families. It is quite clear that there is a need for much greater investment in supporting families so they do not get to the position where they have children that come to the attention of the department of child safety.

Mr ANDREW: Has the Australian South Sea Islander community ever approached you about their adoption and what has happened within their framework here in Queensland?

Mr McDougall: Can I just clarify whether you are talking about traditional adoptions or adoptions under the—

Mr ANDREW: Yes, I am just talking about adoptions in general. I know in my community and my heritage there is something to do with Australian South Sea Islanders and adoptions within their realms. Has any of that ever been looked at with the Human Rights Commission and how that affects those communities?

Mr McDougall: I can take that question on notice as to whether it has ever been raised with the commission. To my knowledge it has not. We have not had direct contact with the South Sea Islander community.

CHAIR: Mr McDougall, can you expand further on your concern that adoption might permanently disrupt the rights of the child to have a relationship with their biological family members?

Mr McDougall: One of our concerns is that adoption, by its legal effect, permanently severs relationships with biological members of their family and, as PeakCare has pointed out on several occasions, that includes future siblings. That is a very severe measure. As I mentioned earlier, unlike New South Wales, there is no system in place at present in Queensland to allow for enforceable adoption plans to be put in place that would facilitate continuing contact, particularly between Indigenous children and their extended families. The ability to maintain their kinship connections and maintain their cultural connections to country effectively is wiped out, and it is left to the whim of the adoptive parents as to whether they will maintain those connections. It is important to understand that New South Wales—and it is clear from the coroner's recommendations that she based her recommendations on the New South Wales model—does allow for adoption plans to be enforced, and that is not in place in Queensland. That is a real weakness.

CHAIR: To expand on that, your concern is that adoption plans in Queensland as it stands are unenforceable, whereas adoption plans in New South Wales have a wealth of legislation?

Mr McDougall: They are enforceable in the Supreme Court, yes.

Mr MOLHOEK: Commissioner, you said earlier that there are already provisions within the legislation for adoption in Queensland but they are not being taken up. Why are they not being taken up and how could we improve what is already in place? Is that not what this legislation is seeking to do?

Mr McDougall: With the greatest of respect, there would be people much better qualified than I am to answer that question. I think that is a question for practitioners or the director-general of the department to answer. I suspect they are not being taken up because adoption is not a suitable outcome in many of those cases. Even in New South Wales, where they have introduced laws that promote adoption, that has not resulted in high numbers of children being adopted. There are 20,000 children in the child protection system in New South Wales and, as I understand it, last year or the year before there were 172 children adopted in that system. It is not the answer to the child protection issue. Investment in services to support families is clearly where the resources and the policies should be directed.

CHAIR: There being no further questions, I would like to thank you for coming along today. I also thank you for your detailed submissions. Are you able to provide the answer to the question that you took on notice to the secretariat by close of business on Monday, 17 August?

Mr McDougall: I can do it before then.

DE SARAM, Ms Binari, Legal Policy Manager and Policy Solicitor, Children's Law Committee, Queensland Law Society (via teleconference)

GRANT, Ms Kate, Deputy Chair, Children's Law Committee, Queensland Law Society (via teleconference)

MURPHY, Mr Luke, President, Queensland Law Society (via teleconference)

CHAIR: I invite you to make an opening statement, after which committee members may have some questions for you.

Mr Murphy: Thank you very much. Can I firstly thank you for inviting the society to appear at this public hearing on the Child Protection and Other Legislation Amendment Bill. In opening, I would like to respectfully recognise the traditional owners and custodians of the land on which this meeting is taking place, Meanjin. I recognise the country north and south of the Brisbane River as the home of both the Turrbal and Jagera nations and pay deep respects to all elders, past and present.

The society, as most committee members would be aware, is the peak professional body for the state's legal practitioners. We are an independent, apolitical representative body upon which government and parliament can rely to provide advice for the promotion of good, evidence based law and policy.

Can I state at the outset that the society, as we specifically mention in our submission, is completely supportive of initiatives that are in the best interests of all children. However, we would hold serious reservations about the proposal contained in this legislation. Before I hand over to Kate Grant to address those specific concerns, can I also record the society's disappointment at the consultation time frame that was provided for this bill. It has been, in the society's view, an inadequate time frame for legislation implementing such important change.

Ms Grant: As an introduction, I am a legal practitioner for the Aboriginal and Torres Strait Islander Legal Service and I have specialised in child protection for the last five years. I am very grateful for the opportunity to appear today.

We have outlined a number of concerns in our submission. I just want to take the opportunity to highlight some of those key concerns, one being the amendments that were proposed by Deputy State Coroner Bentley following the inquest into Mason Jet Lee and, in turn, relied upon recommendation 7.4 of the Carmody inquiry. It is our concern that this inquest is into a child, Mason Lee, who was not Aboriginal or a Torres Strait Islander child. He was actually not placed in out-of-home care. As per paragraph 948 of the coroner's report, you will see the department submits that these recommendations did not form part of the actual inquest and were not explored thoroughly. It was their view that the report should not comment on it. The QLS supports that view in the sense that this bill's proposed amendments are outside the scope of the inquest. We have some concerns that, although Deputy State Coroner Bentley acknowledges the over-representation of ATSI children in the system, which hovers at around 55 per cent of all children in out-of-home care, it is merely the supporting rationale that this bill removes ATSI children from the CP system which would in turn alleviate some of the pressure. It is our view that there needs to be more research into this and we should be supporting an approach that addresses the systemic issues of why children are placed in out-of-home care and why there is an over-representation of ATSI children as opposed to just a quick solution.

In addition to that, given the changes which have come about as recently as October 2018, with the introduction of permanent care orders in section 61G, in practice the permanency planning and stability for children is already provided for in the current act. What this means in practice is that case planning and family group meetings allow for permanency to be planned for on a six-monthly basis and also permanent care orders cannot be revoked by the parent. We are supporting the fact that existing permanent care orders are sufficient to provide for stability of children in the out-of-home care system.

In addition to permanent care orders being in place, we have to acknowledge that in the Aboriginal and Torres Strait Islander community adoption is very controversial. It is not a part of Aboriginal and Torres Strait Islander custom. The past practices have caused significant trauma in the community and it is always a topic that deals with a lot of controversy. We would support that any commentary or proposals around adoption would come after significant consultation with the Aboriginal and Torres Strait Islander community, and that is not going to happen quickly. As the president has just mentioned, this has been a very quick implementation from the findings to a bill being presented on 14 July. We would suggest that is not enough time to do the appropriate research.

In addition to that, we are also submitting that it does not accord with section 6 and section 7 of the Adoption Act because there is a better option to adoption, and that is the permanent care orders that are currently in place. There is not enough evidence to really understand how that is operating at the moment. I understand there have been very few permanent care orders in place since October 2018. We would suggest that there would be great value in doing some further research to understand these numbers and also to see what impact that has had on the child protection system in the sense of whether that has changed the statistics in regard to the number of children on long-term guardianship orders or permanent care orders.

We would also submit that it is contrary to the Human Rights Act 2019 in the sense that it actually severs relationships with family and community—something Aboriginal and Torres Strait Islander children desperately try to keep in regard to their self-determination. Parents, of course, due to trauma over the course of their lives, are very distrusting of anything that does sever that right. In addition to that, we have some of the most vulnerable parents in the child protection system, with impairments and disabilities. We think there is insufficient commentary around how they will be managed in terms of these amendments in the sense of whether they will be supported in the provision of their consent and also in being provided with the requisite legal advice and access to justice to make those fully informed decisions.

Finally, we also submit that two years is not enough time for any family in a very vulnerable position to make the changes required to be reunified with their parents. We note also that the department had mentioned this at the Carmody inquiry in the sense that they have said the length of time and care and the number of short-term orders, being two years at a time, are not sufficient to make the changes in the parents' lives that are required to provide a safe and supporting environment for children who have been in out-of-home care. We think this needs to be taken into consideration when looking at stability for the children. Permanent care orders allow for this in the sense that, although they cannot be revoked by parents, they allow for ongoing case planning, which involves connection with community and their culture over a significant period of time, which we think is to their benefit.

Mrs GERBER: You have expressed your disappointment around the time frame given to consult with stakeholders. Can you inform the committee what you might have considered to be an adequate time frame, given the significance this legislation might have in an individual's life?

Mr Murphy: In the circumstances of this proposal, given the significant changes that arise from it and the contentious nature of the issues, it requires, we believe, far greater consultation than has been undertaken. In terms of what it should be—I think we have had from 14 July to 3 August—it is a question of sufficient time to enable that consultation to take place. Whether that is six weeks or eight weeks, I do not think it is something that a hard number can be put on, but it should certainly be far longer than has been provided for.

Ms McMILLAN: Thank you for your time this morning. Could you provide any information that you might have on the impact of the state's prioritisation of open adoption over long-term foster care in New South Wales? Do you have any feedback from our counterparts in New South Wales?

Mr Murphy: I do not. Kate, do you have any information? If Kate does not have any, can we take that question on notice and see if we are able to ascertain some of that data?

Ms Grant: I do not have any information, statistics or data on hand to comment on that.

CHAIR: Is it something that you would like to take on notice?

Mr Murphy: I am not sure that it is data that we will readily have available to us, but I am happy to ask our policy department to see if anything can be obtained. If not, we will advise the committee secretariat.

CHAIR: Thank you.

Mrs McMAHON: My question is in relation to your concern about the two-year period. You outlined in your submission that a two-year time frame in which a parent must address issues of concern is too short. Where is it in the bill that sets a two-year time limit at which point a decision must be made? My reading of it was that it was an ongoing review and that there was not any imposed hard-and-fast time line of a parent to have two years to sort their stuff out.

Ms Grant: I suppose I am drilling down into the detail of what happens in practice more so than in legislation in the sense that a child's journey through the child protection system usually starts with a short-term custody order, and there is a time frame of two years on that order at the moment before it moves to a long-term guardianship order. What happens in practice is that a child is in the system for two years. Sometimes that can be two years actually in the court process itself before an order is made. Once the two years is completed, it moves directly to a long-term guardianship order. In that

circumstance, a permanent care order is not made straightaway. Obviously, a child has to have some permanency with the foster carers prior to a permanent care order coming into effect or being applied for.

What we are seeing with any amendment would be that, if the child is on a long-term guardianship order and a review as per the proposed bill takes place, which would happen in a two-year period from that long-term guardianship order being made, then potentially adoption could be applied for. That is a very quick time frame and that is of course the shortest time frame that could be made, so a child could potentially be in the system for possibly four or five years before adoption could be looked at. In practice, two years is not enough time for reunification to happen if it is a very complex matter. It takes a lot longer than that, and we would suggest a child would need significantly more time going through the reunification process.

CHAIR: That brings to a conclusion this part of the hearing. In relation to the question that you took on notice, could you provide your answer to the secretariat by close of business on Monday, 17 August?

Mr Murphy: We will do everything in our power to do that.

CHAIR: Thank you for your written submissions and your time this morning.

HILLAN, Ms Lisa, Director, Policy and Research, Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd (via teleconference)

MORGAN, Mr Garth, Interim CEO, Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd (via teleconference)

CHAIR: I invite you to make an opening statement, after which committee members may have some questions for you.

Mr Morgan: I start by acknowledging the traditional owners of the land that we are meeting on. I am calling in from the Turrbal country and I want to pay my respects to their relatives past, present and emerging. Thank you for providing us with this opportunity to discuss the proposed bill. QATSICPP is the peak body representing Aboriginal and Torres Strait Islander child protection organisations and also working towards eliminating over-representation of Aboriginal kids in the child protection system.

QATSICPP does not support the Child Protection and Other Legislation Amendment Bill 2020 in its current form. We believe that the bill places Aboriginal and Torres Strait Islander children at significant risk of forcible adoption. In our view, the permanency priority for Aboriginal and Torres Strait Islander children to be adopted needs to be removed from the legislation. We acknowledge references to the child placement principle as a protection, but the implementation of those protections is reliant on good practice.

The coroner's report that led to this bill being introduced acknowledged poor departmental practice and an overburdened system as key reasons for more routine consideration of adoption. We would agree with the analysis of the department's poor practice. Significant over-representation of Aboriginal and Torres Strait Islander kids in child protection is a report card that shows the system is failing our kids, but we do not believe that adoption is an appropriate answer; nor do we have faith in relying on practice responses to enacting legislative protections. We believe there need to be much stronger safeguards in place. We think these should include an independent statutory report to parliament on the department's adherence to the child placement principles. We also believe that the director-general and courts must be provided with independent advice from an appropriate Aboriginal or Torres Strait Islander agency in all permanency decisions.

We are absolutely supportive of permanency for all children, including Aboriginal and Torres Strait Islander children, and we agree with the proposed hierarchy that permanency with parents is the best option and then with family. The other suitable person is a less desirable option than a family member other than parents, because the family member maintains the child's connection to family and their right to culture, so we think that second permanency priority should be split into two separate priorities.

We also believe that Aboriginal and Torres Strait Islander agencies are better placed than the department to provide permanency planning for our First Nation children. They are better able to identify suitable family members and are better engaging with families in these kinds of discussions. Thank you again for the opportunity and I welcome any questions.

Mrs McMAHON: Could you talk us through the Aboriginal and Torres Strait Islander Child Placement Principle that is currently embedded in the child protection legislation and how this amendment may impact that principle?

Mr Morgan: The child placement principles are essentially a rights framework. We have prevention as an element, partnership as an element, participation as an element, placement as an element and connection as an element. Collectively, we think if they were implemented well we would not actually get a situation where the child's rights are being undermined—not just the rights of the Aboriginal and Torres Strait Islander culture but the broader rights. We think all rights need to be looked at as a total suite of rights rather than a hierarchy of rights so that their right to culture is less important than another right.

We think in practice they will lead to good outcomes. We agree that there are some times when children cannot stay with their parents. There would be, in our view at least, very little reason or occasion where a child could not stay connected with their family—somebody who is an appropriate family member who is able to maintain their connection to their broader, extended key networks as well as their culture. That is kind of the way they work.

Mr MOLHOEK: Mr Morgan, could you talk to us a bit about the TSI adoption practices? Could you give us a summary of that so we can better understand that?

Mr Morgan: There are two separate things. I will make a general statement and then I think I will refer that to the member for Cook as the authority on the subject. What we are talking about within this act is potentially forcible adoptions. We are not talking about adoptions linked to any kind of cultural practice. Forced adoption is not part of Aboriginal culture; that is not part of Torres Strait Islander custom.

As part of our submission, noting that there is a piece of legislation in the House at the moment around traditional adoption for the Torres mob, we did not want to muddy the waters by bringing that into this. We actually think you would need to talk to Torres Strait Islander people, and the member for Cook would be a person who would be a great authority on that as well as other Torres representatives, to talk to their custom. We are not best placed to do that within the context of this bill.

CHAIR: Garth, could you proffer an opinion about the two-year deadline? We have heard opinions from different submitters and in evidence this morning. Could you address your issues about the two-year deadline for parents? If you do not mind, could you focus on remote communities with limited access to rehabilitative services that may be available in those remote communities?

Mr Morgan: There are a few parts to that question. I will respond by saying that there are some practical considerations. That is, when you have a hard deadline, it is a really big decision and potentially you might be the third or fourth child safety officer who has dealt with the case. Very rarely are you going to get good decisions that are made. The first kind of consideration or problem that I have is the quality of decision-making as we approach a hard deadline that is really an arbitrary one. We heard from ATSIWLS about what they believe should be a much longer time frame. I think an arbitrary two-year time frame probably forces decisions that may not be optimal.

The second one goes to the child placement principle. We would be much more comfortable with a two-year time frame if we saw that the child placement principle was implemented to an appropriate standard. If we did that, we would have parents who were participating and there would be partnership, we would be able to do some connection planning, and all of those best interests of the child now and into the future would be met. We think the two-year time frame is arbitrary, but I think the more important issue is: regardless of whether it is two years or 10 years, if we are not in a situation where we have the child placement principle being implemented then no time frame is going to be adequate, in our view.

To the issue of remote communities, they are really complex contexts, I suppose, and you are right that there are some situations where there are not necessarily services, or as many support services as you might find in a metro area. I think in those situations we need to ensure we are engaging with appropriate family more broadly to try to broker ways of ensuring the child is connected. I think if a child is removed from a community and taken somewhere very distant, you get really bad outcomes for that child initially but then also into the future. Whilst some of their needs might be met, others certainly will not be met. I think the issue of remote communities is one that requires a much greater response than a child protection response. We need to ensure there are adequate levels of housing, for example, so that we do not have overcrowding. That is something that the Commonwealth and the state need to work on collectively. We need to make sure there is employment so that people are engaged and they have adequate income. We need to make sure that the cost of food is not significantly higher. One example I saw recently was that a packet of 11 lamb chops cost I think $83. That is ridiculous, particularly for people living in a community where employment is very marginal. How are people supposed to afford food like that? It is a broader kind of response that is needed. When you have a really complex situation, the system response required plus the needs of the child, to try to do that in two years would be challenging for anyone, I would have thought.

CHAIR: Thank you. That brings to a conclusion this part of the hearing. I would like to thank you for the evidence and for your written submissions.

LEWIS, Ms Natalie, Commissioner, Queensland Family and Child Commission

VARDON, Ms Cheryl, Principal Commissioner, Queensland Family and Child Commission

CHAIR: I invite you to make an opening statement, after which committee members may have some questions for you.

Ms Vardon: At the outset I want to acknowledge the traditional owners of the land on which we meet and pay our respects to elders past, present and future, thinking particularly of the younger ones who are on their way, some of whom we will be considering today.

I am the principal commissioner and chief executive of the Queensland Family and Child Commission. I want to introduce our new commissioner, Commissioner Natalie Lewis, who joined the commission a few months ago—not even that. She brings a great energy and commitment to the commission to add to the fine range of senior staff that we have. Our role, as you will know, is to provide independent oversight of the child protection and child safety systems. As such we look to—always—the voice of the child, particularly when it looks as if the voice of the child is not being heard. We think in this particular case, with this bill, there is a need for children and young people to be consulted. That could be through our Growing Up in Queensland project that we carry out every couple of years.

In our independent oversight I want to flag one of the recommendations in particular: that we will make sure that in our oversight role we keep a very close watch on this bill and its outcomes and on anything to do with long-term guardianship and permanency orders for children and young people in Queensland. The origin, as previous speakers have said, follows recommendations from the Deputy Coroner at the inquest for Mason Jet Lee and also follows a previous recommendation from the Carmody report. I want to say at the outset that Mason's death has not been in vain: it has led to a number of significant reforms. On every set of significant reforms in child safety there is always a child's name, an incident, often tragic, which has prompted those reforms. A key one for the QFCC has been the implementation of the Child Death Review Board, which now sits with us and will conduct systemic reviews.

In terms of the QFCC's submission on this particular bill, one of the challenges of the state—and I am talking about the state as the parent—is to never lose sight of the children. We are talking about vulnerable children in this case—very vulnerable children. Queensland as the parent needs to be aware that the children are more vulnerable than perhaps a range of other kids. Therefore the state must hesitate before it gives up its parenting powers, particularly in terms of these children. The QFCC is of the view that, while adoption will continue to be a consideration, alternatives are available including a more careful and nuanced, if you like, use of the powers under existing legislation.

We will be oversighting the outcomes for children and young people and looking at the intent of what happens, but I also want to say that the department of child safety has announced some practice reforms in this area which will help in our oversight function. I would commend those to you. The critical principle to consider whenever long-term guardianship or permanency orders of some kind are being considered, including adoption, is that the safety, wellbeing and best interests of a child must always come first when the state makes decisions for them on their behalf. Clearly, we are talking about the state as the entity, but I get back to that important interpretation of that—that is, the state is the parent—and to not lose sight of children in any way: who are they, where are they and who is looking after them? Those things need to be taken into account. That principle around the best interests of a child must be conveyed unambiguously and in ways that have a better interpretation, if you like, than at the moment—a clearer interpretation. There are always opportunities to strengthen existing legislation and we believe that this legislation can be strengthened to take into account the total needs of the child.

That concept of permanency, not losing sight, should include a balanced consideration of physical, relational and legal elements rather than legal permanency being the sole or even dominant criteria. All of those things are consistent with basing decisions on the needs of the child rather than the system. That is absolutely critical.

We also submit, and other speakers have mentioned this as well, that any implementation of the legislation should include close work with external stakeholders and experts, and I have mentioned young people as part of that consultation, particularly for decisions regarding permanency planning for Aboriginal and Torres Strait Islander children. My colleague Commissioner Lewis and I are jointly concerned about the bill's potential effect on Aboriginal and Torres Strait Islander children. I will now invite the commissioner, Natalie, to make some remarks on this point. Thank you.

Ms Lewis: Thank you, Commissioner, and thank you to the committee members for inviting us to speak today. Can I also acknowledge country and pay my respects to the elders of the Jagera and Turrbal people. As a guest on country it is also important to remember that the lives of Aboriginal and Torres Strait Islander children are profoundly impacted by the bill that we have before us and the work that we each do in our agencies every day.

The principal commissioner is correct when outlining our shared concern about aspects of the proposed bill. This is particularly the case as it relates to Aboriginal and Torres Strait Islander children. In our submission we outlined the need for independent expert advice to be a feature during the operation as well as the design of any proposed amendments. Our view is that there should be a requirement for the chief executive to seek independent expert advice in making decisions about the application of permanent care orders and adoption orders. This could extend to the need for courts to seek evidence of the engagement of independent, culturally informed experts to ensure decisions reflect Aboriginal and Torres Strait Islander child placement principles to the full intended effect of the principle, not just passive regard to five words that live within the legislation. This should be to the standard of active efforts, which I am more than happy to talk further about, but essentially that establishes a criteria, an expectation, to which all decisions and actions under the legislation should be pursued. They should be active, they should be timely and they should be thorough.

The bill as it stands raises complex issues for non-Indigenous children also. Its proposed preference option list, in our view, oversimplifies the complex issues involved with choosing adoption on behalf of any child. As my colleague has said, permanency goes beyond legal stability and adoption. It needs to be considered in the context of a child's ongoing connection to kin, country and culture and, more broadly, the people and places that are significant to them. We cannot know what those things are unless we actually engage children and seek their perspectives.

In this case, 'ongoing' means that what is in the best interests of a child needs to be considered both now and into the future. That is the obligation created under the legislation. Our view is that adoption, like all permanency orders, including safe reunification, is a means to an end. They are all options available under the existing legislation and intended to achieve the goal of permanency for a child. Pursuit or attainment of adoption or any other order is not and should never be considered the goal or the measure of success. Securing the long-term safety and wellbeing of children is and must always remain the goal. Orders are a means to an end. Prioritising or privileging particular orders, including adoption as facilitated by this bill, makes attainment of that order the goal. That compromises and undermines the application of the paramount principle. Who determines what the appropriate number of adoptions each year shall be? What volume of orders will suffice? In our view, it is far more important to aspire to the goal that all children who have been subject to statutory intervention can enjoy long-term safety, wellbeing and stability. This should be the measure of success and the reportable outcome of interest to all of us. The QFCC, with access to the requisite data and other relevant information, would be well placed to independently report on the system's ability to deliver this outcome for all of our children. Thank you.

Ms Vardon: Thank you, Natalie, and thank you, Chair. We would like to pause there and perhaps take some questions.

Mrs GERBER: I can see that in your submission you have noted that sufficient public comment time is necessary to ensure full consideration is given to all the possible consequences of this bill. In light of the importance and significance of this bill for children and families, is it the QFCC's opinion that the time frame given to consult on the bill is inadequate to some degree?

Ms Vardon: It is difficult—and I will ask my colleague to comment as well—but when you are consulting on something you really need to draw a line in the sand somewhere and balance that with the need, in this case, across a really big state to have proper consultation and to not just tick the box, if you like, around consultation. In those terms, I think we would like to see extended consultation. I would maintain the point as well that the voices of children in particular need to be heard. Otherwise, we are making decisions based on the needs of the system rather than incorporating all of those who have concern for the needs of the children. The children and young people we have spoken to have very clear thoughts and views on this and they need to be heard.

Mrs GERBER: Commissioner, do you think the time frame given to consult on the bill was inadequate, given those comments?

Ms Lewis: How long is a piece of string? If you read the submissions, they are very consistent in terms of the feedback that is continually provided, irrespective of a particular type of amendment. There is always an insistence—and rightly so—that those most impacted by these decisions should be adequately consulted. I think it would have been particularly difficult to mobilise young people, children

and their families and facilitate adequate participation within that time frame. In terms of the stakeholders, a lot of the input and the feedback is consistent input and feedback that is provided at different points, right along the journey of reform in child protection.

Mr MOLHOEK: In the previous session we heard from the Child Protection Peak. Can you explain the difference between TSI adoption practices and normal adoption or what is being proposed in the legislation?

Ms Vardon: I think each of us could do that. We have had long association with both those processes. They are quite separate. I will ask the commissioner to tackle that in detail, thank you.

Ms Lewis: I think it is really important that we do not conflate the two. Traditional adoption for Torres Strait Islander people is a long-held cultural practice. The terminology of adoption, or the introduction of that, is actually around providing legal recognition of a cultural practice that has happened. It is not part of the child protection system and it is very different from the scenario we find ourselves in, where the department could actively be pursuing adoption without the consent of Aboriginal and Torres Strait Islander families. It is very different in that one has nothing to do with the child protection system. The bill before us is very clearly about adoption of children currently involved with the out-of-home care system.

Mr MOLHOEK: Does the bill address TSI adoption practices or does it completely ignore them at this point? With what is being proposed in the current legislation—

CHAIR: There is a separate piece of legislation before the House to address that.

Mr MOLHOEK: My question is: will that address the shortcomings in this legislation, if there are any?

Ms Vardon: We do not know at this stage.

CHAIR: Thanks for your written submission and thank you for attending today.

HARDY, Dr Fotina, Queensland Branch Member, Australian Association of Social Workers

SCARFE, Ms Angela, Senior Policy Adviser, Australian Association of Social Workers (via teleconference)

CHAIR: The committee welcomes you to make an opening statement, after which the committee members will have some questions.

Ms Scarfe: Good morning and thank you very much for this opportunity to address you. I am really sorry that I cannot see you all there in person, but our pandemic has got in the way of several things and one of them is my ability to come and address you.

The Australian Association of Social Workers is the professional body representing more than 12,000 social workers in Australia. We are a tertiary qualified profession which aims to enhance the quality of life of every member in society. We do that by considering the relationship between the biological, the psychological, the social, the cultural factors that are in a person's life and how they influence that person's health, wellbeing and development. When we are working with people we work with individuals, families, groups and communities, maintaining a dual focus on improving human wellbeing while addressing any systemic or structural issues that are detracting from their wellbeing. These include inequality, injustice and discrimination. This has significant implications for how we approach the issues being considered in this inquiry.

We consider the wellbeing and protection of children within broader social and political contexts. We strive to promote the best interests of children. This is based on our unwavering commitment to the convention on the rights of the child. In responding to and working in partnership with children, young people and their families, we bring into account an understanding of not only the interrelated nature of wellbeing, abuse and neglect, tied up with issues such as poverty, domestic violence, drug and alcohol misuse and disability, but also the ongoing impacts of colonisation and the stolen generation. As a result, social workers are recognised throughout the world as the core professional group in child protection policy, management and practice.

Starting with the rights of the child, as identified in the United Nations Convention on the Rights of the Child, we endorse the approach that for the full and harmonious development of a child's personality they should grow up in a family environment characterised by happiness, love and understanding. For most children, this is the family into which they were born. This has several direct implications.

We know that rights go hand in hand with complementary responsibility. The first responsibility is that every level of government—that is federal, state and local—is to ensure there are adequate supports for vulnerable families. In some instances that will be things specific to that family, like mental health support and maybe parenting skills—at the Commonwealth level, we want to stress that it requires things like adequate income and access to preventive health care—but also it means things specific to that family's local environment. For example, no matter where a child lives in Australia or in Queensland, they have a right to things like speech therapy support, early diagnosis of any disabilities they may have and early treatment and responses. That informs our specific input into this bill.

We agree that stability is really important, but that does not mean that this act is the way to achieve that stability. There are several reasons we want to say that about this particular act. The first is that permanency and stability are already things available to children and families in Queensland, indeed, through previous legislation that was introduced as recently as 2018. Adoption is also already available to children and families in Queensland.

I want to get back to permanency. The provisions of permanent guardianship are a really powerful tool to achieve that in other states. In Queensland, these provisions have not been operating long enough for us to assess their effect on achieving permanency for children. What we know is that it has been taken up enthusiastically so far and there needs to be more time to see how that will translate into long-term assistance for children.

Other things that we know are also based on experience and research in terms of the long-term effects on adoption and removal of children. We know that as children develop into adolescents and young adults they need to reconnect. They go looking for their family of origin and they go looking for the culture and the connections they have to extended family and to culture, to history and to place. For example, in my work across the country I have worked with adult organisations representing people who were put into institutions as children. The journey they undergo to reconnect is really important, and the circumstances in which they were originally separated were really important as well.

As our submission has made clear, adoption, being a strict, sudden and legal disconnection—a permanent disconnection from those origins—compounds trauma both for the adopted person and for the family and community from whom they were adopted. Our second point is that adoption inserting in this way has the potential to actually do more harm in the long term.

The third point we want to make is that we already know that the children and the young people who will be subject to adoption are very vulnerable and very traumatised. That is why they have come to the attention of child protection. We should not assume that the legal status of adoption, by conferring a different legal status, somehow undoes the level of complex need that those children will go into their adoptive family with. Remember, adoption is a way of the state cutting off further support to that family. You are actually giving a legal status to children who are very traumatised already but not necessarily putting in place the supports that they needed from early on.

At this point I think Dr Hardy can supplement our points, because Fotina has detailed experience of working in the Queensland setting.

Dr Hardy: Do you want to perhaps ask some questions?

CHAIR: We are in your hands, Dr Hardy. Do you want to add to what Angela was speaking about? We can go straight to questions.

Dr Hardy: I think we can go to questions and I can supplement through there so that it is targeted.

Mrs McMAHON: I guess the layperson on the street probably has a very rose tinted view of what adoption means—that it is a great outcome—and thinks of pictures of orphanages and children wanting adoption. What we are hearing this morning is that the process of adoption is actually quite traumatic and in many cases has more of a negative impact on a child than a positive one. How do we talk to the community in general so that they have an understanding about the processes involved in adoption—that it is not 'one size fits all' and that a child who gets adopted is going to have a bright and beautiful future from hereon in? What is the conversation we need to have to explain to people more broadly the difficulties in going through the adoption process and that it is not the optimal outcome for all children?

Ms Scarfe: I think that is such a good insight and such a fabulous question. Yes, there is this view that with the stroke of a pen all of these children's problems will be solved, whereas we know from talking to adults that that was not the case. In our submission we have research going back into the stories of people who were adopted in that they were abused as well. Even though people have this view of adoption, I think we also know about the importance of our own connections. I think there is something to do with inviting people to reflect back on or to think about how much joy we get from our own extended family. You will have lots of people in Queensland who have been living and been part of their rural communities for a long time and who have taken over the family business or who have been on a pastoral lease for a long time or who have been in Brisbane for umpteen generations—that is, to invite people to think of how they also get so much of their identity from a continuing story.

I have worked with a lot with people, like I said, who were removed from family and are now adults. They are very articulate when they speak to you. I do not want to say, 'We should have campaigns where people say, "It didn't work for me",' but any way we can open up opportunities for people who, as adults, can look back on their childhoods and see what was not good about adoption—we should give those people's voices a chance to be heard. When we have the chance to speak, we have to make sure that people know that we have spoken to those people and that if you ask someone this is what they will tell you. I will never forget a woman saying to me, 'I grew up in an orphanage. No, I didn't. No, I didn't grow up in an orphanage. I survived the orphanage and I grew up when I left.' Anytime that any of us has heard from those people, their stories are very powerful and I think we need to just make sure that we keep answering another story. It is not the be-all and end-all. It is not utopia. It is not what we think it is. There is no easy answer to your question. It is a really important question and it is a really long and detailed process.

CHAIR: In your submission you talked about the fact that there is a need for a much longer period of time for permanency orders to be properly accessed in Queensland. Do you have a time line in mind?

Dr Hardy: I guess what we are saying is that the legislation that came through has not been in force for too long and we need to be able to look at that and evaluate whether it has been successful and what the issues have been, and I think that will take a few years. We need to invest in research to make sure that before we start making even more decisions we know that that has actually worked. What is the evidence telling us? At the moment I do not think we have that evidence.

To go back to your point, Mrs McMahon, one of the other things that I would suggest is that this has been a very rushed process, and having consultations and having discussion in the community I think is a really important way for people to become aware. I think we have forgotten about the Forde inquiry, which was not that long ago. They are forgotten Australians and we have so many people who are still experiencing significant trauma. Before we start making such really important decisions about people's lives, let us take some time to do it properly—to look at the research and look at what has happened overseas and in other jurisdictions—because it is not the panacea; it is an option.

CHAIR: Thank you for your attendance today. Thank you for your written submissions.

The committee adjourned at 11.36 am.